

REMARKS

Reconsideration of this application, as amended, is respectfully requested.

Claim 115 was amended to replace the term "recovering" with --collecting-- to use the same term that is in Example 10, which is found in U.S. Patent No. 5,888,497 filed November 7, 1996 (as serial no. 08/745,063). This application claims priority from that patent under 35 U.S.C. §102(a). It is noted that the Examiner only alleges that claims 121 and 122 are not supported by the '063 application but acknowledges that the methods of claims 115 and 117 are supported.

It is believed that the amendment to claims 121 and 122 render the 35 U.S.C. §112, first paragraph rejection for allegedly failing to be supported by the specification of '063 and the present application moot. Applicants do not agree, but in the interest of expediting prosecution have amended those claims. Applicants expressly reserve the right to prosecute all presently unclaimed subject matter in related applications.

The Examiner's attention is again drawn to Examples 9 and 10 of U.S. Patent No. 5,888,497, which issued from the 08/745,063 application from which priority is claimed. Note that there is no reference to 30 kd in the '497 patent. Examples 9 and 10 show the efficacy of cultured medium produced as set forth in the pending claims; clearly these examples provide ample guidance for making and using the cultured medium, e.g., in frozen form as in Example 10.

Claims 115-122 were rejected under 35 U.S.C. §103(a) as allegedly obvious over the Jain PCT. Applicants respectfully traverse.

The Examiner alleges that Jain is available as a reference because the "present invention" is not described in the '063 application and the Jain PCT was published more than one year before the filing date of the present application. This statement conflicts with the Examiner's statement that the specification describes the material that suppresses proliferation of cancer cells as having a molecular weight of at least 30 kd, since claims 116 and 118 include this feature in the claims. However, the Jain PCT includes Examples 9 and 10 of the '063 patent application, therefore whatever is disclosed in the Jain PCT cannot be considered obvious over that reference because this application claims priority from the '063 application.

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Since the '063 application was filed prior to the Jain PCT application, and since the presently pending claims are clearly enabled by the instant application and/or by its parents, the claims are patentable over the Jain PCT.

Furthermore, it is unclear why dependent claims 116 and 118 are rejected if the Examiner admits that the methods of claims 115 and 117 are supported, but argues that production of a material below 30 kd is not supported. Clarification is requested.

Claims 115-122 were finally rejected under the judicially created doctrine of obviousness-type double patenting over the claims of U.S. patent 6,224,912. Applicants reserve the right to file a terminal disclaimer to overcome the obviousness-type double patenting rejection of claims 115-122 over US 6,224,912; however, it is respectfully submitted that at least the claims without the 30 kd subject matter should not be subject to this rejection.

Accordingly, it is believed that the present application is in condition for allowance.

In view of the foregoing it is respectfully submitted that all rejections have been overcome and that the application is in condition for allowance.

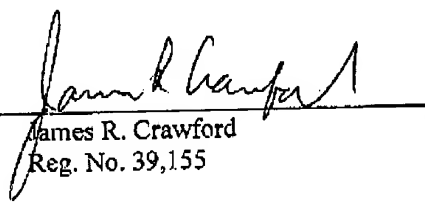
Early issuance of a Notice of Allowance is earnestly solicited.

If any additional fees are due, the Commissioner is authorized to charge deposit account no. 50-0624.

Respectfully submitted,

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I hereby certify that this correspondence is being transmitted via facsimile to telephone number 1-703-872-9307 and is addressed to the Commissioner for Patents, P. O. Box 1450, Alexandria, VA. 22313-1450 on the date indicated below.

James R. Crawford

Signature

Date December 9, 2003

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